

A                    **JOSEPHINE ETA BIMCHIN v. NAIM HOLDINGS BHD  
& ORS**

HIGH COURT SABAH & SARAWAK, KUCHING

LEE HENG CHEONG J

[SUIT NO: KCH-22NCVC-7/2-2014]

B                    6 JANUARY 2016

C                    ***LAND LAW:** Acquisition of land – Compulsory acquisition – Land compulsorily  
acquired by Minister for public purpose – Discovery 15 years later that land not used  
for public purpose – Whether Gazette notification for acquisition valid – Whether  
acquisition tainted with malice and fraud – Whether State Government has  
unfettered discretion to deal with land in any way or manner after acquisition –  
Sarawak Land Code, ss. 15A, 46 & 48*

D                    ***LIMITATION:** Land – Acquisition – Land compulsorily acquired by Minister for  
public purpose – Award accepted without protest – Discovery 15 years later that land  
not used for public purpose – Claim for damages beyond 36 months' period –  
Whether claim caught by limitation – Public Authorities Protection Act 1948,  
s. 2(a) – Specific Relief Act 1950, s. 8(3)*

E                    By a *Gazette* notification under s. 48 of the Sarawak Land Code ('SLC') issued  
by the second defendant, the plaintiff's land was compulsorily acquired by  
the Minister of Planning and Resource Management for the purpose of the  
Kampung Paoh Penyo Resettlement Scheme ('the scheme'). According to the  
plaintiff, during the acquisition exercise in 1998, she was told by the third  
or fourth defendants that there was no ground to oppose the said acquisition  
as it was for a public purpose. The plaintiff accepted the awarded  
F                    compensation of RM86,765 ('the said award') for the said land. However,  
in 2013, the plaintiff discovered that the land was not used for the scheme  
but was instead developed by a private company for a commercial housing  
project. The plaintiff claimed for damages against the defendants and a  
declaration that the *Gazette* notification was null and void and of no legal  
G                    effect on the grounds that (i) the whole acquisition exercise was tainted with  
malice and fraud in that there was no intention of the second, third or fourth  
defendants to use the said land for the purpose it was acquired for; (ii) the  
plaintiff was misled in surrendering the said land; (iii) the usage of the land  
was for a private purpose and not an inch of the plaintiff's land was used for  
H                    the purpose it was acquired for; (iv) no attempt was made by the second,  
third or fourth defendants to correct the fact that the land was developed for  
a private purpose by a private company; and (v) pursuant to s. 15A of the  
SLC, the fourth defendant did not have unfettered discretion to deal with the  
land in any way or manner it liked after the acquisition.

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**Held (dismissing claim):**

- (1) There was never any bad faith or malice or fraud at all on the part of the defendants at the time the land was acquired for its stated purpose. There was also no misrepresentation perpetrated on the plaintiff and at the time of the acquisition, the plaintiff herself admitted that no Government officer had misrepresented anything to her. (paras 14 & 31)
- (2) After the completion of the compulsory acquisition of land under Part IV of the SLC, where the Superintendent of Lands and Surveys Samarahan had taken possession of the land, the land was vested in the Government as State land. Therefore, there was no necessity of issuing a revocation of a *Gazette* notification issued under s. 48 of the SLC because the land was already a State land. (para 29)
- (3) Pursuant to s. 48 of the SLC, the authority to declare any alienated land required for public purpose lies with the relevant Minister required for land *ie* Minister of Resource Planning and Environment and not the permanent secretary of the Ministry. There is nothing in s. 48 of the SLC which authorises the permanent secretary of the Ministry concerned to make any decision to acquire or declare any land needed for public purpose. The Minister of Resource Planning and Environment was not made party to the present suit. (paras 14, 15, 19 & 21)
- (4) The acquisition process was completed in 1998. However, the plaintiff initiated this action in 2014 which was about 17 years later. The plaintiff's action against the second to fourth defendants was beyond the 36 months' period and was therefore caught by the limitation under the first limb of s. 2(a) of the Public Authorities Protection Act 1948. In accepting the said award without protest, the plaintiff's claim was also barred by s. 8(3) of the Specific Relief Act 1950. (paras 12, 32 & 34)
- (5) Pursuant to s. 15A(2) of the SLC, the Minister concerned is authorised to alienate or reallocate a land which had been surrendered or resumed under Part IV of the SLC for any of the purposes under s. 46 of the SLC to any person, corporation or body of persons approved by the Minister if, in his opinion, are under any of the following circumstances which is to be read disjunctively: (i) for the benefit of the State; (ii) for the benefit of any part of the State; (iii) for the benefit of the public, generally; or (iv) for the benefit of any class of the public. In the present case, it was within the Minister's power and authority to alienate and reallocate the land which, in his opinion, benefited any class of the public. (paras 36-37)

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**A Case(s) referred to:**

*Litus Jau & Anor v. Boustead Pelita Tinjar Sdn Bhd & Ors* [2014] 1 CLJ 880 CA (*refd*)  
*Members of the Commission of Enquiry on the Video Clip Recording of Images of a Person Purported to be an Advocate and Solicitor Speaking on Telephone on Matters of Appointment of Judges v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim* [2011] 6 MLJ 490 (*refd*)

**B** *Ng Chee Keong & Ors v. Lembaga Letrik Negara & Anor* [1991] 1 CLJ 567; [1991] 3 CLJ (Rep) 323 HC (*refd*)

*Secretary of State for India in Council v. Akbar Ali & Anor* [1923] Allahabad 523(2) (*refd*)  
*United Development Company Sdn Bhd v. The State Government of Sabah & Anor* [2010] 5 CLJ 986 HC (*refd*)

**C** *Yew Lean Finance Development (M) Sdn Bhd v. Director Of Lands & Mines, Penang* [1976] 1 LNS 173 HC (*refd*)

**Legislation referred to:**

Public Authorities Protection Act 1948, s. 2(a)  
Land Code (Sarawak) (Cap 81), ss. 13, 15A(2), 46, 48, 54(3), 56, 57  
Specific Relief Act 1950, s. 8(3)

**D** *For the plaintiff - Simon Siah; M/s Baru Bian Advocates & Solicitors*  
*For the 1st defendant - Shankar Ram & Daniel Ling; M/s Thomas, Shankar Ram & Co Advoc*

*For the 2nd - 4th defendants - Ivy Sulling; AGC's, Sarawak*

**E** *Reported by Najib Tamby*

**JUDGMENT**

**Lee Heng Cheong J:**

**The Plaintiff's Claim**

**F** [1] In this suit, the plaintiff claims against the defendants for the followings:

**G** (a) A declaration order that the *Gazette* notification under s. 48 of the Sarawak Land Code ("SLC") dated 18 February 1998, issued by the second defendant, purportedly for the public purpose ie, for the Kampung Paoh Penyo Resettlement Scheme ("the said *Gazette* notification") is null and void and of no legal effect;

**H** (b) Further and/or in the alternative a declaration order that in issuing the said *Gazette* notification under s. 48 of the Sarawak Land Code dated 18 February 1998 through the second defendant with no intention to pursue the intended purpose of the same, the fourth defendant was in breach of her fiduciary duty to the plaintiff and therefore the said *Gazette* notification under s. 48 of the SLC dated 18 February 1998 is null and void;

**I** (c) Loss and/or general damages to be assessed by the Registrar;

- (d) Exemplary damages; A
- (e) Interest on the judgment sum for loss and/or damages suffered by the plaintiff at the rate of 8% from the date of the *Gazette* notification ie, 18 February 1998 to date of judgment and realisation;
- (f) Costs of this action; and B
- (g) Any further order or relief deems fit and proper by this Honourable Court.

### Background

[2] By the said *Gazette* notification under s. 48 of the Sarawak Land Code (Cap. 81) dated 18 February 1998, issued by the second defendant, only about 1.6437 hectares of the plaintiff's said land with a total area of 1.8332 hectares described as Lot 630 Block 25 Muara Tuang Land District ("the said land") was compulsorily acquired by the Minister of Planning and Resource Management for the purpose of the Kampung Paoh Penyo Resettlement Scheme. C D

[3] By an award dated 22 May 1998, the plaintiff was awarded a compensation of RM86,765 ("the said award") for the said land. As a consequence of the said acquisition of 1.6437 hectares for the purported Kampung Paoh Penyo Resettlement Scheme, a new title was issued to the plaintiff for the remaining piece of land totalling 2010 square metres known as Lot 1543 Block 25 Mara Tuang Land District. E

### The Plaintiff's Case

[4] The plaintiff contended that at the time of the acquisition of the said land *vide* s. 48 of the SLC in February 1998, she was told by the servant or agent of the third or fourth defendants that there is no ground to oppose the said acquisition as this was for a public purpose, ie, for the Kampung Paoh Penyo Resettlement Scheme. As a result the plaintiff accepted the said award of RM86,765 as she was told just to accept the offer of the second and/or third and/or fourth defendants and/or their servants or agents. F G

[5] Around the beginning of 2013, the plaintiff found out that the said land was not used for the Kampung Paoh Penyo Resettlement Scheme as per the said *Gazette* notification but developed by a private company for commercial housing project. By the end of 2013, the plaintiff managed to get a brochure from the office of the first defendant at the said land, which is used to promote the sale of the houses on the said land and found out that the first defendant is the developer of the said commercial housing project. H

[6] The plaintiff discovered that the said commercial housing project consisted of double-storey terrace and double-storey semi-detached houses costing as follows: I

- A (i) Double-storey Terrace RM400,000++  
(ii) Double-storey Semi-Detached RM600,000++

[7] The plaintiff claimed that not even an inch of the said land purportedly acquired for the Kampung Paoh Penyo Resettlement Scheme, was used for the Kampung Paoh Penyo Resettlement Scheme.

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[8] The plaintiff further contended that the said *Gazette* notification, purportedly for the public purpose ie, for the Kampung Paoh Penyo Resettlement Scheme is null and void and of no legal effect on the following grounds:

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(a) that the whole acquisition exercise was tainted with malice and fraud in that there was no intention of the second, third or the fourth defendants to use the said land for the purpose it was acquired for;

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(b) the plaintiff was misled in surrendering the said land to the second, third or fourth defendants in that the said land would be used for a public purpose but eventually this was not the case;

(c) it was clear that not an inch of the plaintiff's said land was used for the purpose it was acquired under the said s. 48 of the SLC pursuant to the said *Gazette* notification;

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(d) no attempt was made by the second, third or fourth defendants to correct the fact that the said land is now developed for a private purpose by a private company; and

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(e) that the usage of the said land is now for a private purpose ie, private commercial housing project as opposed to a public purpose stated in the said *Gazette* notification.

[9] As a consequence of the acts of the second or third or fourth defendants, as stated above, the plaintiff had suffered loss and damages.

Particulars

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(i) the loss of developing the said land commercially as what had been done by the first defendant; and/or

(ii) the plaintiff's loss is equivalent to the profits of the first defendant from the said housing development based on the terrace and semi-D units built on the said land; and/or alternatively

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(iii) the market value of the said land to the time of filing this action.

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[10] Alternatively that the loss and damages suffered by the plaintiff to be assessed by the Registrar. Further and/or in the alternative, the plaintiff claimed that in issuing the said *Gazette* notification, the second defendant had no intention to pursue the intended purpose of the same and was an abuse of the fiduciary duty of the fourth defendant to protect the plaintiff's rights and/or title in and possession of the said land in that by their said act as

aforesaid the fourth defendant had failed to act for the benefit of the plaintiff, being native of Sarawak. Therefore the said *Gazette* notification is null and void.

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### Consideration Of The Plaintiff's Case Against The Defendants

#### *Compulsory Acquisition Of The Said Land Tainted With Malice And Fraud?*

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[11] As regards the plaintiff's contention that the whole acquisition exercise of the said land was tainted with malice and fraud in that there was no intention of the second, third or the fourth defendants to use the said land for the purpose it was acquired for and that the usage of the said land is now for a private purpose ie, development of the private commercial housing project as opposed to a public purpose stated in the said *Gazette* notification, this court finds as follows.

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[12] As stated on or about 10 June 1998 a sum of RM86,765 was paid to the plaintiff for the compulsory acquisition of the said land and the plaintiff accepted the said sum of RM86,765 without any protest and/or did not file any reference to the courts under ss. 56 and 57 of the SLC. In accepting the said sum of RM86,765, without protest, the plaintiff's claim is barred by s. 8(3) of the Specific Relief Act 1950.

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[13] In *Ng Chee Keong & Ors v. Lembaga Letrik Negara & Anor* [1991] 1 CLJ 567; [1991] 3 CLJ (Rep) 323, the court at pp. 323 & 327 held as follows:

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(b) The plaintiffs were precluded from challenging the validity of the acquisition by a writ of action because under the provisions of the land acquisition Act the only matters that can be litigated by the Court are limited to matters as prescribed in Part V of the said Act.

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(c) Under s. 68 of the Act, the plaintiff cannot ask for compensation at market value and loss of income which amounts to bringing a suit to set aside an award made by the appropriate authority.

#### At Page 327:

Apart from the provisions of the Land Acquisition Act which as I have said, precludes the plaintiffs from instituting this action, s. 8(3) of the Specific Relief Act 1950 which reads:

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No suit under the section (recovery) of immovable property) shall be brought against any government in Malaysia. (Words in parenthesis are mine).

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Section 8(3) of the Specific Relief Act 1950 fortifies the proposition that a writ action cannot be brought to challenge the validity of a compulsory acquisition proceeding. In whatever ways one may consider the case for the plaintiffs, one can have no doubt that firstly there is no cause of action raised in the statement of claim and (2) even if there is a cause of action the plaintiffs are in fact asking for reliefs which the Court has power to grant.

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A [14] In the circumstances, this court finds that there was never any bad faith or malice or fraud at all on the part of the defendants at the time the said land was acquired for its stated purposes.

B [15] Pursuant to s. 48 of the Sarawak Land Code, the authority to declare any alienated land required for public purpose lies with the relevant Minister responsible for land ie, the Minister of Resource Planning and Environment (previously known as Minister of Planning and Resource Management) and not the permanent secretary of the Ministry. The Minister of Resource Planning and Environment is not made a party to this present suit.

C [16] Section 48 of the Sarawak Land Code states as follows:

(1) Whenever it appears to the Minister that any particular land is needed for any of the purposes specified in section 46, the Minister shall make a declaration to that effect.

D [17] In *Secretary of State for India in Council v. Akbar Ali & Anor* [1923] Allahabad 523(2) held at p. 524:

The Language of S. 6 is perfectly plain and clearly bars the Courts from enquiring into the question whether the purpose for which land, in respect of which a declaration under section 6 has been issued, is public purpose or not. (47 Cal. 500 PC, 48 Cal, 916, Dist.) [P. 524, C. 2.]

E The usual acquisition proceedings under subsequent sections of the Land Acquisition Act followed and ultimately the Collector took possession of the land under section 16 of the Act. Sub section (3) of section 6 of the Act declares that a declaration under this action shall be conclusive evidence that the land is needed for a public purpose or for a company as the case may be. The sole ground on which the suit has been decreed in the Courts below is that in spite of this declaration the land was not really needed for a public purpose.

F The language of Section 6 of the Land Acquisition Act is perfectly plain and clearly bars the Courts from enquiring into the question whether the purpose for which land in respect of which a declaration under section 6 has been issued is public purpose or not. The appeal must, therefore, be allowed and we accordingly allow it and dismiss the suit with costs in all Courts including in this Court fees on the higher scale.

G [18] In *Yew Lean Finance Development (M) Sdn Bhd v. Director Of Lands & Mines, Penang* [1976] 1 LNS 173; [1977] 2 MLJ 45, the court at p. 45 held *inter alia* as follows:

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- (1) the government was the sole authority to decide what is, or, what is not, a public purpose, and the decision by the Government in this respect could not be questioned by a civil court;
  - I (2) it would not be possible or practical to specify the exact purpose of any particular lot. If the land was acquired for a public purpose the plaintiffs had no choice but to surrender the land to the Government, and it was immaterial to them for what purpose the land was used, as long as it was for a public purpose;

(3) there was no need for the State authority to confine its acquisition of land to purposes which came under one head only, ie, either under section 3(a), 3(b) or 3(c). They may use either head individually or may combine one or two of them as the case may be.

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At Pages 46 and 47:

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Now, therefore, Government is the sole authority to decide what is, or, what is not, a public purpose, and the decision by Government in this respect cannot be questioned by a Civil Court. In the case of *Secretary of State for India in Council v. Akbar Ali* [1923] ILR 14 Allahabad 443 it has been held that where a declaration has been issued under section 6 of the Indian Land Acquisition Act, 1894, stating that certain land is required for a "public purpose," the court is debarred from inquiring into the question whether the purpose for which the land in respect of which such a declaration has been issued is a public purpose. Although section 6 of the Indian Act does not read identically with our Act the purpose contained in that section is the same. It is quite clear from a reading of sections 3, 7 and 8 of the Land Acquisition Act, 1960 that whenever any lands are intended for any of the purposes referred to in section 3 of the Act the Collector shall prepare and submit to the State Authority under the provisions of section 7 a plan of the whole area of the said lands showing the particular lands or part thereof which it was necessary to acquire and a list of such lands in Form C. Once this is done and the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the *Gazette*. Section 8(2) & (3) read as follows:

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8(2) A copy of the list of lands referred to in paragraph (b) of section 7, amended, if necessary, in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.

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(3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein.

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It is therefore quite clear that once a *Gazette* notification under section 8 is given it is conclusively established that the lands are needed for the purpose stated. The only complaint the owners of acquired lands can have will be if provisions of the Act have not been complied with. Furthermore, if the compensation awarded them is not adequate they have a right to appeal to the High Court. Apart from that, the question of acquisition cannot be gone into.

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[19] In the present action, the said land was imposed under s. 48 by the Minister concerned *vide* the Sarawak *Gazette* G.N. 16 No. 584 on 26 March 1998. Thus the plaintiff ought to seek a declaratory order to declare the declaration made by the Minister under s. 48 of the SLC which was gazetted on 26 March 1998 *vide* G.N. No. 584, null and void and of no legal effect. However, in the present action, the Minister of Resource Planning and Management was never made a party to the suit. There is nothing in s. 48

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A of the SLC, which authorised the permanent secretary of the Ministry concerned, to make any decision to acquire or declare any land that is needed for public purpose.

B [20] In the Federal Court case of *Members Of The Commission Of Enquiry On The Video Clip Recording Of Images Of A Person Purported To Be An Advocate And Solicitor Speaking On Telephone On Matters Of Appointment Of Judges v. Tun Dato' Seri Ahmad Fairuz bin Dato' Sheikh Abdul Halim* [2011] 6 MLJ 490, the Federal Court at p. 500, held *inter alia* as follows:

C [26] It is trite law that the purpose of an order for *certiorari* is to quash the legal effect of a decision. *In England, in the case of Council of Civil Service Unions and Others v. Minister for the Civil Service* [1984] 3 ER 935 the House of Lords held that for a decision to be susceptible to the court's reviewing powers, there must first be a decision by a decision maker or refusal by him to make a decision, and that decision must affect the aggrieved party by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy.

D [27] We adopt the same view. Under the scheme of O. 53 of the RHC, only a person adversely affected by the decision of public authority shall be entitled to make the application for the judicial review. *In the present case, there is no dispute that the Commission is a public authority. But we are of the view that the commission is not a decision making body.* (emphasis added)

E [21] This court finds that based on the express provision of s. 48 of the Sarawak Land Code and the above Federal Court's decision, the permanent secretary of Ministry of Resource Planning and Management is not a decision maker and does not have power and authority to make the declaration and decision to impose s. 48 of the Land Code on the said land. The resumption of the said land was made in accordance with Part IV of the Sarawak Land Code. To challenge the validity of the acquisition of the said land, the plaintiff has to challenge the acquisition and the declaration made by the Minister concerned under s. 48 of the SLC. However the Minister concerned is not made as a party to the present action.

G [22] The plaintiff also did not file an action to challenge the decision of the Minister of Planning and Resource Management who issued the said *Gazette* notification, to compulsory acquire the said land under s. 48 of the Code.

H [23] Evidence was adduced that the said land had been resumed by the State Government in 1998. Thus when the Minister concerned made the decision in 2006, to exchange the said land with part of the land belonging to Khidmat Mantap Sdn Bhd, the said land had become State land. DW3 had testified that a decision was made by the Minister concerned to change the location of the Kampung Paoh Penyo Resettlement Scheme from Lot 1542 Block 25 Muara Tuang Land District to Lot 531 Block 14 Muara Tuang Land District, eight years after the said land had been resumed and become State land.

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[24] Section 54(3) of the Sarawak Land Code provides as follows:

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Upon such entry being made as in this section provided, the whole or part thereof, as the case may be, shall **vest in the Government**. (emphasis added)

[25] Pursuant to s. 13 of the Sarawak Land Code, the Minister concerned has the power to alienate State land. When the location of the Kampung Paoh Penyo Resettlement Scheme was changed to Lot 531 Block 14 Muara Tuang Land District in exchange for Lot 1542, Block 25 Muara Tuang Land District, the said land is already State land.

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[26] Thus, the alienation of Lot 1542 Block 25 Muara Tuang Land District (being part of Lot 630 Block 25 Muara Tuang Land District) to Khidmat Mantap Sdn Bhd was done in accordance with the relevant laws. The resumption of Lot 1542 Block 25 Muara Tuang Land District was completed on 17 November 1998 when the Superintendent of Lands and Surveys Samarahan took possession of the said land and the said land thereafter is vested in the Government as State land pursuant to s. 54 of the Sarawak Land Code.

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[27] Furthermore, the Kampung Paoh Penyo Resettlement Scheme at the new site which is part of Lot 531 Block 14 Muara Tuang Land District, which is adjacent to the said land was completed with all infrastructures and amenities.

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[28] The alienation of Lot 1542 Block 25 Muara Tuang Land District was on an exchange basis with Lot 531 Block 14 Muara Tuang Land District in 2006 which are adjacent to each other and was done in accordance with the relevant laws as both lands had become State land. The Minister concerned exercised his powers under s. 13 of the Sarawak Land Code and directed the alienation of State land (formerly Lot 1542 Block 25 Muara Tuang Land District) to be exchanged with part of Lot 531 Block 14 Muara Tuang Land District, to Khidmat Mantap Sdn Bhd pursuant to an agreement between Khidmat Mantap Sdn Bhd and the State Government of Sarawak whereby the Kampung Paoh Penyo Resettlement Scheme will be relocated to that part of Lot 531 Block 14 Muara Tuang Land District, which will be surrendered by Khidmat Mantap Sdn Bhd and subject to the condition that Khidmat Mantap Sdn Bhd, is to complete the infrastructural works for the Kampung Paoh Penyo Resettlement Scheme and Khidmat Mantap Sdn Bhd completed all infrastructural works on 10 March 2009. The said land was then duly alienated to Khidmat Mantap Sdn Bhd.

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*Whether The Said Gazette Notification Ought To Have Been Cancelled And/Or Revoked First Before The Change Of The Location Of The Kampung Paoh Penyo Resettlement Scheme, Can Be Made?*

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[29] The plaintiff contended that the said *Gazette* notification must be cancelled and/or revoked before the change of the location of the Kampung Paoh Penyo Resettlement Scheme, can be made. This court finds that after

- A the completion of the compulsory acquisition of the said land pursuant to Part IV of the Sarawak Land Code, whereby the Superintendent of Lands and Surveys Samarahan had taken possession of the said land, the said land thereafter is vested in the Government as State land. Thus there was no necessity of issuing a revocation of a *Gazette* notification issued under s. 48 of the Sarawak Land Code because the said land is already a state land.
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- [30] Further s. 54(3) of the Sarawak Land Code clearly provided that upon the entry in the Land Register that the Superintendent of Lands and Surveys Samarahan had taken possession of the said land, the said land is vested in the Government. Thus there is no necessity for the *Gazette* Notification No. 584 dated 26 March 1998, to be revoked before the change of location of the Kampung Paoh Penyo Resettlement Scheme in 2006 as the said land had become State land since 1998.
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*Any Misrepresentation?*

- D [31] The plaintiff also contended that she was misled by the second and/or fourth defendants and/or their servants or agents in surrendering the said land without any protest. However this court finds that there was never any misrepresentation perpetrated on the plaintiff and at the time of acquisition as the plaintiff, PW1 herself admitted that no Government Officer had misrepresented anything to her.
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*Limitation*

- [32] From the evidence adduced, this court finds that the plaintiff never protested or challenged the compulsory acquisition of the said land. The acquisition process started when the land was imposed under s. 48 of the Sarawak Land Code *vide Gazette* Notification No. 584 dated 26 March 1998 and the acquisition process completed when the Superintendent of Lands and Surveys Samarahan took possession of the land on 17 November 1998. After the Superintendent of Lands and Surveys Samarahan took possession of the portion of land acquired on 17 November 1998, the said land is vested in the Government as provided under s. 54(3) of the SLC. However, the plaintiff only took this action in 2014 which is about 17 years after the acquisition of the said land.
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- [33] This court is guided by the case of *Litus Jau & Anor v. Boustead Pelita Tinjar Sdn Bhd & Ors* [2014] 1 CLJ 880 at pp. 898-900; [2014] 1 MLJ 794 at pp. 805-808 where the Court of Appeal held:
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- [33] Against this backdrop the Plaintiffs instituted an action against the defendants. The issue now is when the plaintiffs' cause of action accrued. Looking at the facts objectively it is safe to conclude that plaintiffs' cause of action against second and third defendants accrued after the issuance of the provisional lease in 1992. Given this scenario and premised on the 36 months limitation provided under ss. 2(a) of the PAPA, there can be no doubt that the plaintiffs' action against the second and third
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defendants is time barred as the suit was brought nearly years after the issuance of the provisional lease is beyond the statutory timeline permitted.

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[38] Under these circumstances we find the learned judge was right in striking out the writ of summons filed against the first, second and third defendants by reason that the plaintiffs' claim against them was statute barred under s. 29(a) of the PAPA and item 97 of the SLO.

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[34] In the premises this court finds that the plaintiff's action against the second, third and fourth defendants was beyond the 36 months' period and thus the plaintiff's action is caught by the limitation under first limb of s. 2(a) of Public Authorities Protection Act 1948 (Cap 198) which clearly stated that "the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within 36 months next after the act, neglect or default complained of".

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*Section 15A Of The Sarawak Land Code*

[35] The plaintiff contended that the State Government does not have unfettered discretion to deal with the said land in any way or manner it like after the acquisition, by referring to s. 15A of the Sarawak Land Code. The plaintiff further contended that the Sarawak Land Code is clear that lands that have been acquired or resumed should only be utilised for the specific purpose which it was originally intended to.

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[36] Pursuant to s. 15A(2) of the Sarawak Land Code, the Minister concerned is authorised to alienate or reallocate a land which had been surrendered or resumed under Part IV of the SLC for any of the purposes under s. 46 of the SLC to any person, corporation or body of persons approved by the Minister if in his opinion are under any of the following circumstances which is to be read disjunctively:

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(a) For the benefit of the State; or

(b) For the benefit any part of the State thereof; or

(c) For the benefit of the public generally; or

(d) For the benefit any class of the public.

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[37] This court finds that the exchange of part of the said Lot 531 which was surrendered by Khidmat Mantap Sdn Bhd as the new site benefited a class of the public ie, the settlers of the Kampung Paoh Penyo Resettlement Scheme. By approving and alienating land acquired to Khidmat Mantap Sdn Bhd for housing development, a class of the public ie, the settlers have benefited. Thus, in the present case, it is within the Minister's power and authority to alienate or reallocate the said land which in his opinion, benefited any class of public such as the reallocation of part of the said Lot 531 as the new location of the Kampung Paoh Penyo Resettlement Scheme and also reallocate the said land acquired from the plaintiff as housing development which benefited a class of public such as the house buyers.

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A [38] This court finds that the case of *United Development Company Sdn Bhd v. The State Government of Sabah & Anor* [2010] 5 CLJ 986; [2011] 7 MLJ 209 referred to by the plaintiff, can be distinguished on the following reasons:

B (a) In *United Development Company's* case *supra*, the purported acquisition was never gazetted when the compensation was paid to the plaintiff and the acquisition was only gazetted, some 17 years later. Therefore, there is irregularity from the beginning in that the so called purported acquisition which was only gazetted, 17 years later. On the other hand, in the present case, all the relevant statutory procedures for compulsory acquisition of the said land have been complied with by the Superintendent including the s. 48 declaration which has been gazetted, inquiry was conducted, the plaintiff attended the inquiry and accepted the award of compensation and the Superintendent had taken possession of the said land.

C (b) In *United Development Company's* case *supra*, the intended purpose of the land acquisition was purportedly for Skim Penempatan Semula which never materialised. In the present case, the Kampung Paoh Penyo Resettlement Scheme actually materialised and was completed. The site of the Kampung Paoh Penyo Scheme was changed to an adjacent land which was a better locality than the original site.

E **Order**

[39] In the light of this court's above findings, this court finds that the plaintiff has failed to prove her case on a balance of probabilities. In the premises this court dismisses the plaintiff's case with costs.

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